

# EXHIBIT A

SMITH KATZENSTEIN  
JENKINS LLP

September 6, 2023

**Via Federal Express**

TherapeuticsMD, Inc.  
951 Yamato Road, Suite 220  
Boca Raton, FL 33487  
Attention: Legal Department

***Re: Afaxys Pharma, LLC v. TherapeuticsMD, Inc.  
Superior Court of the State of Delaware  
N23C-08-220 PRW CCLD***

To whom it may concern:

Pursuant to Sections 11.1(a) and (c) and 11.3 of the Promotion Agreement, between TherapeuticsMD, Inc. and Afaxys Pharma, LLC, dated as of February 10, 2020, this letter constitutes service of process on you. Enclosed is a copy of the Summons, and Complaint and Supplemental Information Sheet filed on August 30, 2023.

Sincerely,

/s/ Kathleen M. Miller  
kmiller@skjlaw.com  
Attorneys for plaintiff

Enclosures

cc: Sidley Austin LLP w/encl.; via email  
555 California St.  
San Francisco, CA 94104  
Attention: Stephen Abreu  
Email: sabreu@sidley.com

TherapeuticsMD, Inc.  
September 6, 2023  
Page 2

and

Jeffrey T. Varsalone, Managing Director w/encl.; *via* email  
VRS Restructuring Services, LLC  
377 Ocean Boulevard, Unit 5  
Hampton, NH 03842  
[jvarsalone@vrsrestructuring.com](mailto:jvarsalone@vrsrestructuring.com)



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
	)	
v.	)	[CCLD]
	)	
THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
	)	

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SUMMONS

**THE STATE OF DELAWARE,  
TO: SMITH, KATZENSTEIN & JENKINS LLP  
YOU ARE COMMANDED:**

1. To summon the above-named defendant TherapeuticsMD, Inc. so that, within 20 days after service, exclusive of the day of service, defendant shall serve upon Kathleen M. Miller, Esquire, Robert K. Beste and Julie M. O'Dell, attorneys for the above-named plaintiff, whose address is 1000 N. West Street, Suite 1501, Wilmington, Delaware 19801, an answer to the Complaint.

2. To serve upon the Defendant a copy hereof and of the Complaint pursuant Section 11.1(c) of the Promotion Agreement.

Dated:

9-6-23

Colleen Redmond

Prothonotary

*Debra Vanecko*

Per Deputy



**TO THE ABOVE-NAMED DEFENDANTS:**

In case of your failure, within 20 days after service upon you, exclusive of the day of service, to serve on Plaintiffs' attorney named above an answer to the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

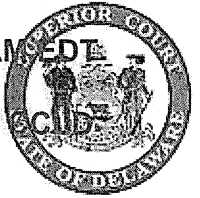
Colleen Redmond

Prothonotary

*Debra Vanecko*

Per Deputy





IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
	)	
v.	)	[CCLD]
	)	
THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

**YOU ARE IN POSSESSION OF A DOCUMENT FILED IN THE  
SUPERIOR COURT OF DELAWARE THAT IS CONFIDENTIAL AND  
FILED UNDER SEAL.**

**If you are not authorized by Court order to view or retrieve this document  
read no further than this page. You should contact the following person:**

SMITH, KATZENSTEIN & JENKINS LLP  
Kathleen M. Miller (No. 2898)  
Robert K. Beste (No. 3931)  
Julie M. O'Dell (No. 6191)  
The Brandywine Building  
1000 N. West Street, Suite 1501  
Wilmington, DE 19801  
302-652-8400  
[kmiller@skjlaw.com](mailto:kmiller@skjlaw.com)  
[rkb@skjlaw.com](mailto:rkb@skjlaw.com)  
[jodell@skjlaw.com](mailto:jodell@skjlaw.com)

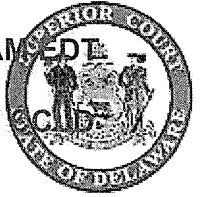
*Attorneys for Plaintiff Afaxys Pharma, LLC*

**THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL.  
REVIEW AND ACCESS TO THIS DOCUMENT IS PROHIBITED  
EXCEPT BY PRIOR COURT ORDER.**

EFiled: Aug 30 2023 11:44AM EDT

SUPERIOR COURT Transaction ID 70751218

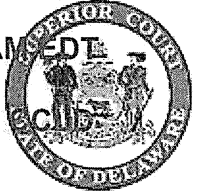
CIVIL CASE INFORMATION STATEMENT (CIS) Case No. N23C-08-220 PRW 6CCLD



COUNTY: [N] K S CIVIL ACTION NUMBER: N23C-08-220 PRW 6CCLD A 8:40 G

<p>Caption:</p> <p><u>Afaxys Pharma, LLC</u></p> <p>Plaintiff,</p> <p>v.</p> <p><u>TherapeuticsMD, Inc.</u></p> <p>Defendant.</p>	<p>Civil Case Code: <u>63CCLD3 A 8:40</u></p> <p>Civil Case Type: <u>Complex Commercial Litigation Division</u></p> <p>Name and Status of Party filing document:</p> <p><u>Afaxys Pharma, LLC</u></p> <p>Document Type: (E.G., COMPLAINT; ANSWER WITH COUNTERCLAIM)</p> <p><u>Complaint</u></p> <p>JURY DEMAND: YES _____ NO <u>X</u></p>
<p>ATTORNEY NAME(S):</p> <p><u>Kathleen M. Miller</u></p> <p><u>Robert K. Beste</u></p> <p><u>Julie M. O'Dell</u></p> <p>ATTORNEY ID(S):</p> <p><u>2898</u></p> <p><u>3931</u></p> <p><u>6191</u></p> <p>FIRM NAME:</p> <p><u>Smith, Katzenstein &amp; Jenkins LLP</u></p> <p>ADDRESS:</p> <p><u>1000 N. West Street, Suite 1501</u></p> <p><u>P.O. Box 410</u></p> <p><u>Wilmington, DE 19899</u></p> <p>TELEPHONE NUMBER:</p> <p><u>302-652-8400</u></p> <p>FAX NUMBER:</p> <p><u>302-652-8405</u></p> <p>E-MAIL ADDRESS:</p> <p><u>kmiller@skjlaw.com, rbeste@skjlaw.com,</u></p> <p><u>jodell@skjlaw.com</u></p>	<p>IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS:</p> <p>_____</p> <p>_____</p> <p>EXPLAIN THE RELATIONSHIP(S):</p> <p>_____</p> <p>_____</p> <p>OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:</p> <p>_____</p> <p>_____</p> <p>(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGE)</p>

THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
	)	
v.	)	[CCLD]
	)	
THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
_____	)	

**PRAECIPE**

To: Prothonotary  
Superior Court of the State of Delaware  
Leonard L. Williams Justice Center  
500 N. King Street  
Wilmington, DE 19801

**PLEASE ISSUE** a summons to Smith, Katzenstein & Jenkins LLP. Our office will serve defendant via Federal Express, pursuant to pursuant to Section 11.1(c) of the Promotion Agreement at the following address:

TherapeuticsMD, Inc.  
951 Yamato Road, Suite 220  
Boca Raton, Florida 33487  
Attn: Legal Department



Dated: August 22, 2023

SMITH, KATZENSTEIN & JENKINS LLP

/s/ Robert K. Beste

Kathleen M. Miller (No. 2898)

Robert K. Beste (No. 3931)

Julie O'Dell (No. 6191)

1000 N. West Street, Suite 1501

Wilmington, DE 19801

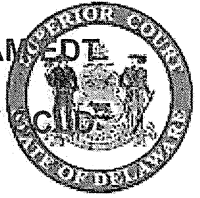
(302) 652-8400

kmiller@skjlaw.com

rbeste@skjlaw.com

jodell@skjlaw.com

*Attorneys for Plaintiff*



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
	)	
v.	)	[CCLD]
	)	
THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
_____	)	

SUMMONS

**THE STATE OF DELAWARE,  
TO: SMITH, KATZENSTEIN & JENKINS LLP  
YOU ARE COMMANDED:**

1. To summon the above-named defendant TherapeuticsMD, Inc. so that, within 20 days after service, exclusive of the day of service, defendant shall serve upon Kathleen M. Miller, Esquire, Robert K. Beste and Julie M. O'Dell, attorneys for the above-named plaintiff, whose address is 1000 N. West Street, Suite 1501, Wilmington, Delaware 19801, an answer to the Complaint.

2. To serve upon the Defendant a copy hereof and of the Complaint pursuant Section 11.1(c) of the Promotion Agreement.

Dated: \_\_\_\_\_

Colleen Redmond  
*Prothonotary*

\_\_\_\_\_  
*Per Deputy*

**TO THE ABOVE-NAMED DEFENDANTS:**

In case of your failure, within 20 days after service upon you, exclusive of the day of service, to serve on Plaintiffs' attorney named above an answer to the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: \_\_\_\_\_

Colleen Redmond  
*Prothonotary*

\_\_\_\_\_  
*Per Deputy*

Defendant.

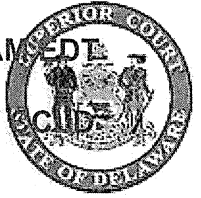
N23 C-08- 22d PRW CCLD

1. Plaintiff's Motion To File Complaint Under Seal is GRANTED.
2. The Complaint (the "Confidential Filing") shall be maintained under seal, subject to the requirements of Superior Court Civil Rule 5(g).

3. In accordance with Superior Court Civil Rule 5(g)(2), Plaintiff shall file within 30 days a redacted public version of the Confidential Filing, redacting only the confidential information in the Confidential Filing.

Dated: 8/23/23

  
\_\_\_\_\_  
Superior Court Judge



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
	)	
v.	)	[CCLD]
	)	
THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
	)	

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**MOTION TO FILE COMPLAINT UNDER SEAL**

Plaintiff Afaxys Pharma, LLC (“Plaintiff”), by and through its undersigned attorneys, hereby seeks leave to file its Complaint (the “Confidential Filing”) in this matter under seal pursuant to Superior Court Civil Rule 5(g). In support of this motion, Plaintiff states as follows:

1. This is a civil action against defendant TherapeuticsMD, Inc. (“Defendant”) for breach contract – a Promotion Agreement.
2. The Promotion Agreement provides that the parties shall maintain the confidentiality of the provisions of the agreement. Promotion Agreement, Article 7.7. Because Plaintiff must describe the terms of the Promotion Agreement and how it was breached, it must refer to provisions in the agreement.
3. To avoid prejudice to any party, Plaintiff respectfully requests that the Court find good cause for permitting the Confidential Filing to be filed under seal so

that the parties may confer regarding confidentiality for this action. The proposed order filed herewith mandates the parties file a redacted public version within 30 days in accordance with Superior Court Civil Rule 5(g).

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests entry of the attached proposed order sealing the Confidential Filing.

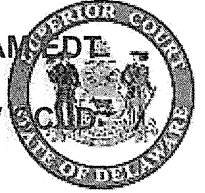
Dated: August 22, 2023

SMITH, KATZENSTEIN & JENKINS LLP

OF COUNSEL:  
SPENCER FANE LLP  
Margaret "Peg" Donahue Hall  
5700 Granite Parkway  
Suite 650  
Plano, TX 75024  
(214) 459-5882

/s/Robert K. Beste  
Kathleen M. Miller (No. 2898)  
Robert K. Beste (No. 3931)  
Julie M. O'Dell (No. 6191)  
The Brandywine Building  
1000 N. West Street, Suite 1501  
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302-652-8400  
[kmiller@skjlaw.com](mailto:kmiller@skjlaw.com)  
[rkb@skjlaw.com](mailto:rkb@skjlaw.com)  
[jodell@skjlaw.com](mailto:jodell@skjlaw.com)

*Attorneys for Plaintiff Afaxys Pharma, LLC*



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AFAXYS PHARMA, LLC	)	
	)	
Plaintiff,	)	Civil Action No. N23C-08-_____
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v.	)	[CCLD]
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THERAPEUTICSMD, INC.,	)	
	)	
Defendant.	)	
_____	)	

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
AND TYPE-VOLUME LIMITATION**

1. This motion complies with the typeface requirement of Superior Court Rule 107(b) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2010.

2. This motion complies with the type-volume limitation of Superior Court Rule 107(h)(1) because it contains 183 words, which were counted by Microsoft Word 2010.



Dated: August 22, 2023

SMITH, KATZENSTEIN & JENKINS LLP

/s/ Robert K. Beste

Kathleen M. Miller (No. 2898)

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[kmiller@skjlaw.com](mailto:kmiller@skjlaw.com)

[rkb@skjlaw.com](mailto:rkb@skjlaw.com)

[jodell@skjlaw.com](mailto:jodell@skjlaw.com)

*Attorneys for Plaintiff Afaxys Pharma, LLC*

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No. N23G-08-  
JUL 25 A-8-40

Defendant.

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Civil Action No. N23G-08-  
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[CCLD]

*Attorneys for Plaintiff Afaxys Pharma, LLC*